

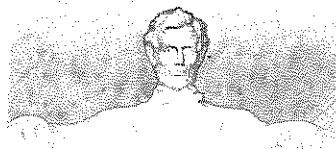
Roger's

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FEB 23 2004

CITY OF LINCOLN

February 20, 2004



CITY OF LINCOLN
NEBRASKA

MAYOR COLEEN J. SENG

www.ci.lincoln.ne.us

Public Works and Utilities Department
Allan Abbott, Director
555 South 10th Street
Suite 203
Lincoln, Nebraska 68508
402-441-7548
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Terry Bundy, PE
Administrator and CEO
Lincoln Electric System
P.O. Box 80869
Lincoln, Nebraska 68508

Dear Terry:

I am returning to you the Memorandum of Understanding (MOU) attached to your letter of February 4, 2004.

This MOU was accepted and approved by Mayor Seng on behalf of the City.

I also want to thank you for all your efforts in arriving at this agreement. I will do all that I can from Public Works and Utilities side to be sure that the coordination of our future projects takes place.

Thank you again for your cooperation at arriving at this agreement

Very truly yours,

Allan Abbott
Director of Public Works/Utilities

- cc: Mayor Seng
Joel Pederson
Roger Figard
Thomas Shafer
Karl Fredrickson
Steve Masters
Gary Brandt
Jerry Obrist
Mark Wullschleger

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into on this 5th day of February, 2004, by and between the City of Lincoln, Nebraska, a municipal corporation (City), and Lincoln Electric System, an administrative agency of the City of Lincoln (LES):

RECITALS

I.

For a number of years the City and LES abided by an informal policy regarding the relocation of LES facilities, including, but not limited to, transmission or distribution lines, switch gear, transformers, substations, etc. (hereafter collectively referred to as "facilities") from public rights-of-way of the City.

II.

Pursuant to the aforementioned policy, the City would pay to LES the non-betterment cost of the relocation of LES's facilities from the City's public right-of-way when required by the City to relocate those facilities to accommodate City projects.

III.

The City has requested a change in the aforementioned policy and the LES Administrative Board has agreed to accommodate the City of Lincoln in its request to change the policy for reimbursement to LES in connection with the relocation of LES facilities at the City's request.

IV.

The City and LES now desire to set forth the new policy regarding payment for the relocation of LES facilities in writing through this Memorandum of Understanding.

NOW, THEREFORE, the City and LES agree as follows:

1. That the City and LES agree to coordinate plans and designs of City road projects and LES projects in order to identify current and future conflicts with each other's facilities and jointly determine fiscally responsible solutions to any identified conflicts. It is agreed that these coordination efforts will include road and LES projects within the City's future service limits as defined from time to time in the Comprehensive Plan and will begin during the conceptual stages of a project and continue through the entire design and construction stages of the project.
2. That, if the jointly coordinated solution as described in paragraph 1 above requires the relocation of LES facilities located on City public right-of-way (ROW), as of the date of this MOU, LES will relocate those facilities at its cost and expense.
3. That if LES has located its facilities on fee ownership, easements, licenses, permits or by prescriptive right outside of City ROW (LES ROW) and the City extends public ROW to encompass the LES facility, any required LES facility relocation, including replacement ROW, shall be at the City's cost and expense.

4. That, if LES has facilities located on LES ROW and in order to accommodate a City road project, LES chooses to relocate facilities to public ROW, the City will pay for the facility relocation. Subsequent relocations for future projects will be at LES expense.
5. That if, in order to accommodate a City road project, LES facilities are relocated onto public ROW and the City requires the subsequent relocation or alteration of such facilities as part of the same road project the City will pay for that subsequent relocation or alteration.
6. That in the event that the City extends its ROW as described in paragraph 3 above, and does not need to relocate the LES facilities at the time of the City's acquisition, the City and LES will enter into a project specific MOU which document or a memorandum thereof will be filed in the City Clerk's office, showing that the City shall pay for the relocation of the facilities, including replacement ROW, if the City requires LES to relocate those facilities at a time subsequent to the City's extension of its ROW.
7. That for so long as LES facilities exist on City ROW, it is the intention of the parties to this MOU that the legal doctrine of merger not apply and that the estates of the City and LES remain separate so that the rights of LES over its facilities can be enforced by LES and the rights of the City over the remainder of its ROW can be enforced by the City. The parties further acknowledge that the preservation of separate estates preserves LES's legal rights should the City subsequently abandon its ROW.
8. That the parties agree that upon the completion of the relocation of LES facilities from the City's ROW as described in paragraph 5 above, that at that time the legal doctrine of merger would apply and the LES ownership interest would merge with the City's ROW and be extinguished.
9. This Memorandum of Understanding may be amended by written amendment executed by both the City and LES.
10. This agreement shall be binding upon the parties hereto, and any successors in interest.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the day and year first above written.

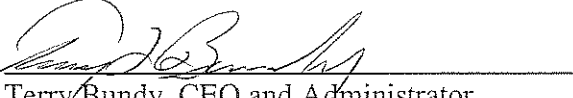
CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By:


Coleen J. Seng, Mayor

LINCOLN ELECTRIC SYSTEM

By:


Terry Bundy, CEO and Administrator